REMARKS

Claims 1-212 are pending in this application, including independent claims 1, 29-31, 68, 96-99 and 127-129. Claims 32-67 and 130-212[1] were withdrawn from consideration in this application in response to an earlier restriction requirement. As to the merits, claims 1-31 and 99-129 are rejected pursuant to 35 U.S.C. § 112 ¶2 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. [12/14/06 Office Action at p. 2.] Claims 1-4, 6-31, 68-74, 76-102 and 104-129 are rejected pursuant to 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,192,340 B1 to Abecassis (hereinafter, "Abecassis"). [12/14/06 Office Action at p. 3.] Claims 5, 75 and 103 are rejected pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Abecassis in view of ordinary skill in the art at the time of the invention. [12/14/06 Office Action at p. 4.]

By this paper, claims 1, 2, 29-31, 68, 96-100 and 127-129 are amended.

Claim 1 is amended to recite, *inter alia*, replace "a plurality" with "at least one"; and "presented" with "transmitted." Similar amendments are made to claims 2, 29-31, 68, 96-100 and 127-129.

Support for the above amendments are found throughout the application as originally filed, for example, in at least originally filed Figs. 1-7, and the corresponding text. No new matter has been added by the claim amendments. Entry of this amendment is respectfully requested.

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[1] Applicant notes a minor typographical error identifying claims 32-67 and 130-2**2**2 being withdrawn from consideration instead of 32-67 and 130-2**1**2.

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Applicant and the undersigned wish to thank Donald L. Champagne for the courteous and productive telephonic interview conducted on March 20, 2007 with Michael A. Sauer and Jessica L. Rando. Because Applicant was not relieved of the duty under 37 C.F.R. § 1.33(b) of providing a summary of the arguments presented during that interview, Applicant provides the following comments:

Applicant discussed Abecassis, the cited reference which formed the basis of the Examiner's rejection of December 14, 2006, as well as the disclosed features of representative claim 1 of the present application. The Office did not find these arguments persuasive, but did, however, invite Applicant to expand upon the arguments presented. As such, Applicant herein responds to the Office Action dated December 14, 2006 and explains further the reasons why the present application is patentably distinct from the cited reference.

Claim Rejection - 35 U.S.C. § 112 ¶2

Claims 1-31 and 99-129 are rejected under 35 U.S.C. § 112 ¶2 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection.

In light of the Office's recommendation, [2] Applicant respectfully traverses the rejection of independent claims 1, 29-31, 99 and 127-129, as amended, and those dependent claims derived therefrom, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Accordingly, Applicant's amended independent claims 1, 29-31, 99 and 127-129, and those dependent claims derived therefrom, are in condition for allowance.

[2] See Office Action at p. 2

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Claim Rejection – 35 U.S.C. § 102(e)

Claims 1-4, 6-31, 68-74, 76-102 and 104-129 are rejected under 35 U.S.C. § 102(e), as being allegedly anticipated by Abecassis. Applicant respectfully disagrees with the Office's characterization of the claims and of the cited art in the stated rejection and respectfully traverses this rejection.

Applicant respectfully traverses the rejection of claims 1-4, 6-31, 68-74, 76-102 and 104-129 under 35 U.S.C. § 102(e) as allegedly being anticipated by Abecassis. As explained more fully below, Abecassis fails to teach, disclose or suggest all of the recited claim elements. Accordingly, a rejection for anticipation is improper.

Applicant's claim 1 recites, *inter alia*:

1.   A method for coordinating supplemental data transmissions with broadcast data transmitted by at least one broadcaster, the method comprising:

receiving schedule information for at least one broadcaster, the schedule information including a broadcast schedule;

identifying, from the received schedule information, broadcast data for transmission by at least one broadcaster;

determining supplemental digital data to be transmitted to listeners of the broadcast data on a digital data receiver; and

transmitting at least a portion of the supplemental digital data to at least one broadcaster prior to the scheduled time of at least one said broadcast.

Abecassis is directed to "communicating a user's information preferences to an information provider; receiving, from the information provider, informational items that are responsive to the user's information [p]references; interleaving and sequencing, for the user, a playing of the received informational items with a playing of a plurality of musical

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items included in an audio library of the user; and playing, for the user and responsive to the interleaving and sequencing, the received informational items within a playing of the plurality of musical items." [Abecassis, Abstract]. Abecassis merely discloses the playing of audio that is *responsive* to an individual user's pre-established music and informational preferences wherein each user receives their own separate stream which fails to teach, disclose or suggest Applicant's claim 1, as amended, of a "real-time," "receiving schedule information for at least one broadcaster, the schedule information including a broadcast schedule" and "identifying, from the received schedule information, broadcast data for transmission by at least one broadcaster."

Further, Abecassis discloses "[p]roviding a broadcast schedule and audio database to which the *pre-established* user's music preferences could be applied to identify audio items for downloading could be done substantially in advance of a programming cycle." [Abecassis, 16:40-44]. Additionally, Abecassis' "audio library" refers to a "plurality of audio items" or the "data, information, or content required to *make audible* the *audio item...* An audio library of a user can comprise, consist of, and/or be obtained from... i) selected audio items...ii) selected audio items... iii) audio items... iv) URLs of specific audio items... v) audio items downloaded from, captured, or otherwise obtained from, a broadcasted signal such as a transmission from an FM station or satellite." [Abecassis, 2:36-53]. Abecassis further discloses a "schedule preferences" which refers to a time based preference or preferences, such as when certain audio, music, and/or information is to be played. [Abecassis, 2:20-22]. Abecassis discloses the ability for a "user" to listen to music or receive information at a time that is scheduled based on when the playlist begins.

It is an object of Abecassis to communicate a user's information preferences to an information provider; receive, from the information provider, informational items that are responsive to the user's information preferences; interleave and sequence, for the user, a playing of the received informational items with a playing of a plurality of musical items included in an audio library of the user; and play, for the user and responsive to the interleaving and sequencing, the received informational items within a playing of the plurality of musical items. [col. 2, ll. 62-67; col. 3, ll. 1-4]. Contrary to this, the instant specification does not rely on, nor does it contemplate the listener.

The Abecassis reference merely discloses a user preference oriented system, where the system knows what a particular user wants for information sent to a single user. If the user cannot communicate its preferences, Abecassis fails because the system does not know what to send back to the user. Abecassis points out schedule information is provided for the user to download data. E.g., at point 1, an audio library and schedule is broadcast containing items 1-N. The user's preferences entered into the receiving device select from items 1-N based upon that schedule and store them for playback at point 2. Fundamentally, in Abecassis, the schedule is used to allow a user to select from what *is* already in the broadcast. Whereas in the pending application, the schedule is used to allow a broadcaster to add to the broadcast what *is not* in the broadcast. Essentially, it creates a secondary or tertiary broadcast to the original broadcast using related and unrelated content.

Applicant's claim 1, as amended, further clarifies the recited invention wherein the "the present invention embodies a series of sub-systems which interact to allow broadcasters to distribute an entertaining and interactive flow of multimedia data to

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accompany standard broadcast data for a multitude of purposes. The supplemental digital

data may be transmitted on a side-band of a radio frequency or on a frequency mask for an

amplitude modulated or frequency modulated signal. Supplemental digital data moves from

a variety of sources through a central point where it is formatted for broadcast and assigned

certain instructions that trigger its broadcast with, for example, standard analog signal

broadcasts." [Spec. 9:13-20] Abecassis, therefore fails to teach, disclose or suggest

Applicant's claim 1, as amended, of a "identifying, from the received schedule information,

broadcast data for transmission by at least one broadcaster". Additionally, Applicant submits

that Abecassis does not disclose at least the element of "receiving schedule information" as

the limitation in claim 1 requires. Whereas, the instant specification discloses a constant

stream of data running at real-time.

Abecassis merely discloses a system where a multimedia player can

communicate via satellite or cable system to send music or data according to a user's

preference to add that music to the user's playlist. [See, Abecassis at col. 16, lines 19-46].

The present application, however, discloses a method, apparatus, and computer readable

medium encoded with said method for "coordinating supplemental data transmissions" from

an infinite resource of broadcasters. [See specification]. The instant application provides a

system where supplemental digital data is coordinated to be transmitted in conjunction with

one or more broadcasters. The origin of this information has no connection to the

listener/user/subscriber, as is the case in Abecassis. There is no control by the listener and

when they listen to their radio, the stream of information transmitted is in real time and not

dependent on downloading a playlist. It is the data-casting system, which coordinates the

supplemental digital data to be transmitted, for a plurality of broadcasters, which is completely independent of the potential listener.

Furthermore, the flow of information is inapposite to Abecassis. The Abecassis reference is simply a subscription radio, where the listener/user subscribes to hear the playlist they created, with supplemental recommendations based on their own preferences, which they must download, not simply turn on a radio station. Abecassis is not a broadcasting system. It is a two-way point-to-point transmission system. The present application however specifically pertains to the broadcaster or broadcasters who program content to be broadcast on behalf of the listeners. Listeners choose to "tune-in" to the program content if they find a particular organization and selection of the content to their liking. The content is streamed in real-time, and is transmitted whether or not there are listeners tuned to the broadcast. Listeners play no role other than to hear or view the content. The data-casting system of the presented claims is intended to support supplemental data transmissions for this type of broadcasting system.

Accordingly, as Applicant cannot find either a system including "identifying, from the received schedule information, broadcast data for transmission by at least one broadcaster" or "receiving schedule information " of claim 1 in Abecassis, at least independent claim 1 and dependent claims 2-28 rejected under 35 U.S.C. § 102(e) are respectfully traversed.

For at least similar reasons, Applicant's amended independent claims 29-31, 68, 96-99 and 127-129, and those dependent claims derived therefrom, are in condition for allowance.

Claim Rejection – 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 5, 75 and 103 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Abecassis in view of the ordinary skill in the art at the time of the invention.

For at least similar reasons as stated above, Applicant respectfully traverses the 35 U.S.C. § 103(a) rejection of claims 5, 75 and 103 over Abecassis in view of the ordinary skill in the art at the time of the invention.

Applicant has chosen in the interest of expediting prosecution of this patent application to distinguish the cited documents from the pending claims as set forth above. These statements should not be regarded in any way as admissions that the cited documents are, in fact, prior art.

Finally, Applicant has not specifically addressed the rejections of the dependent claims. Applicant respectfully submits that the independent claims, from which they depend, are in condition for allowance as set forth above. Accordingly, the dependent claims also are in condition for allowance. Applicant, however, reserves the right to address such rejections of the dependent claims in the future as appropriate.
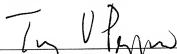
CONCLUSION

For the above-stated reasons, this application is respectfully asserted to be in condition for allowance. An early and favorable examination on the merits is requested. In the event that a telephone conference would facilitate the examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED FOR THE TIMELY CONSIDERATION OF THIS AMENDMENT UNDER 37 C.F.R. §§ 1.16 AND 1.17, OR CREDIT ANY OVERPAYMENT TO DEPOSIT ACCOUNT NO. 13-4500, ORDER NO. 4232-4002.

Respectfully submitted,
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